HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2) (b)

Description of the Case.

Criminal Appeal No. 120 of 2003
2944 of 1999 (Old No.)

Pratap Sager Rai … Appellant

Versus

State … Respondent

Approved for reporting

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~~Not approved for reporting.~~

Date of decision 19th November 2004.

Initial of Judge.

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IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Reserved

Criminal Appeal No. 120 of 2001
2944 of 1999 (Old No.)

Pratap Sagar Rai
S/o Sri Ram Pyare Rai
Ex-cook Magte DGBR Camp (Mess)
P.S. Dharchula
District Pithoragarh … Appellant

Versus

State … Respondent

Sri. P.S. Adhikari learned senior counsel assisted by
Sri B.S. Adhikari learned counsel for the appellant

Sri Nandan Arya learned A.G.A. for the State

Coram : Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble B.C. Kandpal, J.)

Present appeal has been filed by the appellant against the judgment and order dated 27.09.1999 passed by the Sessions Judge, Pithoragarh in S.T. No. 24 of 1998 Sate Vs. Pratap Sagar Rai convicting the appellant under Sections 302 I.P.C. and sentencing him for life imprisonment.

Brief facts giving rise to the appeal are that the deceased Savindra Singh was a driver. The accused, namely, Pratap Sagar Rai is a cook in the mess of the Department [Director General Border Roads (herein after referred D.G.B.R.)] and Nar Singh, Bhup Singh, Hayat Singh and Man Singh were labourers while Raj Kumar Gulia was a supervisor.

On 19.01.1998 at about 2:30 p.m. Savindra Singh went at the mess of the D.G.B.R. situated at Magti and the accused was present there as he was on his duty. Man Singh, Nar Singh,

Bhup Singh and Hayat Singh were working by the side of the said mess. After some time they have heard some altercation between the deceased Savindra Singh and the accused Pratap Sagar Rai, they immediately rushed towards the mess where they saw that the accused Pratap Sagar Rai and the deceased Savindra Singh scuffling together. The accused took his knife and wielded on the left side of the stomach of the deceased. Thereafter, the accused fell down on the ground and the accused alongwith the used weapon (knife) fled away. The labourers took the injured to Raj Kumar Gulia (P.W.3) at Ghasku Camp and after first aid Raj Kumar Gulia took the deceased to Primary Health, Dharchula where he was declared dead.

Thereafter Raj Kumar Gulia (P.W.3) scribed the F.I.R. and handed over at P.S. Dharchula at 5.25 P.M. The investigation started by Sri Lokesh Kumar Sharma – S.S.I. and on the same day he went towards the place of the occurrence in order to prepare the site plan. The Investigating Officer recorded the statement of the witnesses and thereafter he went for search of the accused. The Investigating Officer arrested the appellant at turn ahead of Pangla at about 2 P.M. Thereafter the accused took the police and the witnesses near the place of the occurrence at one hill for about 10 Yards away from the place of incident and handed over a knife by which he had committed the murder.

The post mortem on the dead body of the deceased Savindra Singh was conducted on 20.01.1998 at 3:30p.m. by Dr. Dhirendra Bankoti (P.W.4). The doctor found following ante mortem injuries on the person:-

"Stab wound over left side of abdomen 10cm Lateral from mid-line, just below costal. Margin measuring 3.5cm. X 0.5cm spindle in shape directed obliquely upwards and medially. Margins cut and inverted."

The doctor opined after the internal examination of the body that the stomach was cut through the left lope of lever and the heart was punctured and diapharam was also cut. The deceased was 38 years old and rigor mortis was present in the upper and lower limbs. The doctor also opined that the injury of the deceased was sufficient to cause death in the ordinary course of nature. The doctor also opined that the deceased died one day before and his murder was committed by knife. He also opined that the death of the deceased could have been occurred on 19.01.1998 at about 2:15 P.M.

The case of the aforesaid murder was investigated by Sri Lochan Kumar Sharma who recorded the statements of the witnesses, prepared the site plan and thereafter recovered the blood-stained knife. The Investigating Officer prepared the memo accordingly as well as the site plan pertaining to the place from where the aforesaid arm was recovered.

The Investigating Officer after completing the investigation submitted the chargesheet against the accused/appellant before the court of C.J.M., Pithoragarh on 20.04.1998.

After submission of the chargesheet the appellant was committed to the court of Sessions and the learned Sessions Judge framed the charges against the accused under Section 302 I.P.C.

The accused/appellant denied of the charges levelled against him and claimed his trial.

The prosecution in order to bring the guilt of the appellant to home produced Nar Singh – P.W.1, Bhup Singh – P.W.2 , Raj Kumar Gulia P.W.3, Dr. Dherendra Bankot P.W.4, Lokesh Kumar Sharma P.W.5 (I.O.).

After the evidence of the prosecution was over, the statements of the accused was recorded under Section 313 Cr.P.C. The appellant has produced Dr. S.S. Kunwar D.W.1 and Laxman Singh D.W.2 in his defence.

Learned trial court, after having perused the entire evidence on record and hearing the learned counsel for the parties, convicted the accused/appellant under Sections 302 I.P.C. and sentenced him for life imprisonment.

Feeling aggrieved by the aforesaid impugned judgment and order the accused/appellant preferred appeal before the Hon'ble Allahabad High Court, which has been transferred to this Court, for disposal, after creation of Uttaranchal State.

We have heard learned counsel for the parties and perused the record.

It has been argued first of all that the First Information Report in the instant case in ante time. Learned counsel for the defence has submitted that in fact on 19.09.1998 at about 12:00 noon, the so called eyewitnesses in the instant case tried to snatch the money which was in the possession of the accused Pratap Sagar Rai and the deceased Savindra Singh in fact intervened, but during this course of loot Savindra Singh sustained injuries and thereafter these so called eyewitnesses who were the real assailants for causing the murder of Savindra Singh waited for the death of Savindra Singh and after he

succumbed injury, they took the deceased to Raj Kumar Gulia (P.W.3) at about 4:00 p.m. Hence under these circumstances the story advanced by the prosecution with regard to the time of occurrence as well as lodging the First Information Report at alleged time appears to be doubtful.

We find that the submission advanced by the learned counsel for the defence is without any basis. It is the definite case of prosecution that the incident had taken place at about 2:30p.m. at the mess of the Camp of D.G.B.R. The distance of the police station from that mess is about 48 km. it has come in the evidence that after the injury was inflicted on the person Savindra Singh, he was immediately taken to Raj Kumar Gulia (P.W.3) and after giving first aid there to the deceased Savindra Singh he took the deceased Savindra Singh for treatment to Government Hospital, Dharchula where the doctor declared him dead. Raj Kumar Gulia (P.W.3) lodged the First Information Report at police station, Dharchula at 5:25p.m. on 19.01.1998. Keeping in view the distance of the police station from the place of the occurrence, it appears to be quite probable that the First Information Report could be lodged at 5:25 p.m. on the date of the occurrence. Further the inquest report also shows that the same started at 5:35 p.m. Therefore, we do not find anything on the record which may suggest that the First Information Report can be said to be ante time.

Learned counsel for the defence has also tried to establish that the death of the deceased had not been taken place at the alleged time, in view of the presence of rigor mortis on the body.

We again do not find any force in the argument. Dr. Dherendra Bankoti (P.W.4) has clearly deposed that the rigor

mortis in the upper and lower limbs was present but it passed off from the neck. He has also deposed that the death of the deceased could have occurred on 19.01.1998 at about 2:15 p.m.

Learned counsel for the defence has also tried to submit that the absence of the eyewitnesses at the police station at the time of the lodging the First Information Report as well as providing the medical treatment to the deceased created a doubt in the prosecution case. He has invited out attention towards the statement of Raj Kumar Gulia (P.W.3) in which he has stated that he took Savindra Singh deceased in the same jeep to Dharchula himself and scribed the report also on his own. He has also invited out attention towards his deposition in the cross examination wherein he has stated that in the First Information Report he has not mentioned that he came to know about the incident through the labourers Man Singh, Bhup Singh, Hayat Singh and Nar Singh. Therefore, according to the submission of the learned counsel for the defence, absence of the witnesses throughout from the place of the occurrence towards the hospital and the police station indicates a cloud to doubt with regard to the truthfulness of the prosecution case.

We again do not find any force in the argument advance by the learned counsel for the defence.

Raj Kumar Gulia (P.W.3) is the officer (supervisor) posted at that Camp and he has clearly deposed that Man Singh, Bhap Singh, Hayat Singh and Nar Singh brought Savindra Singh deceased in an injured position to him and at that time Savindra Singh was not in a position to speak. This witness was informed about the entire incident by Man Singh, Bhap Singh, Hayat Singh and Nar Singh and thereafter he took Savindra Singh in the same jeep for first aid and then to the

Government Hospital, Dharchula where the doctor declared him dead. This witness thereafter scribed the First Information Report and lodged the same at the police station, Dharchula.

The prosecution has in fact produced the eyewitnesses Nar Singh (P.W.1) and Bhup Singh (P.W.2) in order to establish the factum of the incident. Therefore, in case, if Raj Kumar Gulia(P.W.3) did not take Nar Singh and other eyewitnesses to Dharchula and police station, the same is not going to discredit the prosecution case in any manner.

It is important to mention here that the knife which has been used in the commission of crime, was subsequently recovered on the pointing out of the accused from the bushes. Nar Singh (P.W.1) has clearly stated in his deposition that it was Pratap Sagar Rai accused who got the blood stained knife recovered from the bushes.

The evidence further reveals that Lokesh Kumar Sharma (P.W. 5) – Investigating Officer has deposed that after the arrest, the accused/appellant Pratap Sagar Rai, disclosed that he could get the knife used in the commission of crime, recovered, and he accompanied the police to the place which is at a distance of about 10 yards from the place of the occurrence and after reaching to that place he recovered the knife from the bushes.

The aforesaid recovered knife was sent to the medical examiner for examination and the chemical examiner report is available on the record as paper No. Ex. Ka. 19. The report of the chemical examiner shows that the blood was found on the knife. It is important to mention here that this knife pertains to the appellant himself, as the mark engraved on the knife is "*P.S. Rai*". Therefore, the recovery of the knife used in the

commission of crime on the pointing out of the appellant is a strong factor which indicates towards the guilt of the accused.

The defence has produced two witnesses in its defence. The defence version is that the deceased came with his truck at about 12:30p.m. and Bhup Singh, Nar Singh, Hayat Singh and Man Singh suddenly appeared in the mess and tried to rob a sum of Rs. 29,400/- which was in possession of the accused. These persons apprehended the accused and forcibly took him by the side of the camp and on account of hue and cry raised by the accused Pratap Sagar Rai, the deceased Savindra Singh appeared over there and he tried to save the accused from the witnesses, namely, Nar Singh, Bhup Singh, Hayat Singha and Man Singh. Nar Singh thereafter entered in the mess and took the knife of the accused and wielded the same on Savindra Singh causing injuries to him. Thereafter, these persons arrested the accused and took him to Ghaska Camp and handed him over to Raj Kumar Gulia (P.W.3) who took the deceased to Hospital, Dharchula and lodged the report in police station, Dharchula.

The version advanced by the defence appears to be without any force. It also does not appear to be natural and believable and does not find any corroboration from the evidence on record. According to the prosecution case, the accused was arrested by the Sub-Inspector of Police along with a sum of Rs. 29,400/- which was recovered from his possession which shows that the story of the robbery planted by the defence that Nar Singh and his companions after committing the murder of the deceased arrested that accused who was having aforesaid money and handed over him to Raj Kumar Gulia (P.W.3) with the amount appears to be palpably wrong.

In case, if the witnesses wanted to rob the money from the accused then after his arrest by these persons what was the obstacle to rob the money from the possession of the accused. We are of the view that the version of the defence advanced before the court appears to be quite imaginary. It has been stated on behalf of the accused that he was arrested on the same day and was handed over to the police, but the case of the prosecution in that the accused was arrested on the next day. In case, if the accused was arrested at the spot, there is no reason to show his arrest on the next day.

As per the prosecution case, the deceased was murdered by the side of the camp where the blood was found on the ground. Again if the murder was not committed by the accused then how and why the blood spots were found on his cloths, which he was wearing at the time of the commission of crime. No explanation has come from the side of the defence about the presence of blood on his cloths.

Report of the chemical examiner Ex. Ka. 19 again shows that the trouser and jacket which the accused was wearing at the time of the commission of crime was having human blood spots and the presence of the blood on the cloths of the accused again points out towards the guilt of the accused with regard to the commission of crime.

Nar Singh (P.W.1) and Bhup Singh (P.W.2) both the witnesses produced by the prosecution have categorically deposed that they were present near the place of the occurrence and at the time of commission of crime they were there and had an occasion to witness the actual incident. They have categorically deposed as to how, in what manner and what time the crime was committed by the accused.

Nar Singh (P.W.1) has stated that he knew the accused Pratap Sagar Rai. He has further deposed that at the time of the occurrence he was loading bolders in the truck which was being driven by Savindra Singh deceased. He has stated that truck belonged to D.G.B.R. and it was brought at Magti at 2:15 p.m. he has further deposed that Savindra Singh deceased after parking his truck went at D.G.B.R. mess to take his meal and after some time this witness heard the hue and cry from the side of the D.G.B.R. mess whereby he along with Man Singh, Bhup Singh and few others went there and found the accused and the deceased scuffling to each other. At that time, the accused gave a knife blow on the stomach of the deceased Savindra Singh. Thereafter, they took Savindra Singh deceased by a jeep to Raj Kumar Gulia (P.W.3) and handed over the deceased to him. This witness further deposed that on the next day he came to know that Savindra Singh had died.

Bhup Singh (P.W.2) has also deposed that he had been working with D.G.B.R. since 1992 and knew the accused Pratap Sagar Rai who was working in the mess. He also knew the deceased Savindra Singh who was working as a driver and one the day of the occurrence at about 2:15p.m. when he was working near Magti Camp along with Man Singh and Hayat Singh then at that time Savindra Singh along with truck came over there and Nar Singh was also with him. After parking the truck near the mess, Savindra Singh went inside the mess to take his meal. Thereafter they heard hue and cry and when they reached over there, they found that the accused and the deceased were scuffling with each other. He also saw that the accused giving a knife blow at the stomach of the deceased who fell down on the ground. This witness along with other

witnesses thereafter took the deceased Savindra Singh on a jeep to Raj Kumar Gulia (P.W.3) and narrated the entire story and handed over Savindra Singh to Raj Kumar Gulia and came back to their work. On the next day he came to know that Savindra Singh had died.

The presence of these witnesses at the place of the occurrence appears to be quite natural as they are the labourers while Nar Singh (P.W.1) is a helper working with the deceased on the day of the occurrence and Bhup Singh was also working near the mess. As per the deposition, the place where they were working is at a distance of about 15 to 20 meters away from the mess. Therefore, the presence of these witnesses is quite natural.

Further the ocular version advanced by the prosecution finds full and absolute corroboration with the medical evidence. Dr. Dhirendra Bankoti (P.W.4) conducted the post mortem examination on 20.01.1988 at 3:30p.m. and found in the internal examination that the stomach was cut through and through and the left lope of lever was also cut. Heart was punctured as well as diapharam was also cut. Therefore, the injuries found on the person of the deceased is absolutely corroboration by the ocular version.

We do not find any reason to disbelieve the testimony of the prosecution evidence.

The defence has examined two witnesses, namely, Dr. S.S. Kunwar (D.W.1) and Laxman Singh (D.W.2). Dr. S.S. Kunwar (D.W.1) has stated that on 28.01.1998, he went to examined the accused under trial and found certain injuries on his person. He opined that the injuries were 7 to 14 days old. This witness has also deposed that he is unable to prove, as to

by whom the accused was beaten. But he has stated that these injuries could have caused due to *MARPIT*. A bold suggestion has been given to the witness about the injuries could have been caused on 18.01.1998 at 12:00-12:30 p.m. but again the doctor has stated that the injuries could have been caused about 2-2½ days after 18.01.1998. Therefore, no definite conclusion can be drawn by the statement of this witness.

Laxman Singh (D.W.2) is *Bandi Rakshak* and he has stated that on 28.01.1998 accused was lodged in lock-up and he was medically examined by Dr. S.S. Kunwar. Therefore, these witnesses do not help the accused in any manner and the evidence adduced by the defence any where does not show that the accused had no hands in the commission of crime.

Perusal of the evidence of both the eyewitnesses produced by the prosecution Nar Singh (P.W.1) and Bhup Singh (P.W.2), clearly establishes that it was the accused/appellant Pratap Sagar Rai and none else who caused injuries on the person of deceased Savindra Singh who ultimately resulted his death.

We are therefore, of the definite conclusion that the genesis of the prosecution case is established beyond reasonable doubt and the involvement of the appellant in the present case for causing the fatal blow on the person of the deceased Savindra Singh which ultimately resulted his death cannot be ruled out.

The medical evidence produced by the prosecution also shows that the deceased died on account of the injuries caused on his person. However with regard to this aspect of the matter as to whether the appellant has been rightly convicted by the court below under Section 302 I.P.C., is again to be assessed in

the light of the evidence produced by the prosecution. The evidence of the witnesses produced by the prosecution clearly shows that it was a grave and sudden provocation to the appellant as prior to this incident there was some scuffle between the accused Pratap Sagar Rai and the deceased Savindra Singh. Further there does not appear any reason with the accused for murdering Savindra Singh. The deceased and the accused/appellant, both of these persons used to reside together and they did not have any sort of enmity between them. It was only on account of grave and sudden provocation to the accused, this crime was committed on account of the scuffle between the accused and the deceased. There must by some provocation to the accused who gave single fatal blow to the deceased who died on account of that blow. Therefore, in view of the fact that the entire incident happened pursuant to a quarrel between the accused and the deceased. Hence, in the light of the evidence adduced by the prosecution, it can be safely presumed that the appellant had no deliberate intention to cause the death of Savindra Singh.

Under the aforesaid circumstances, we do not think that on offence under Section 302 I.P.C. had actually been made out against the appellant Pratap Sagar Rai, as the incident was a result of a sudden quarrel between the appellant Pratap Sagar Rai and the deceased Savindra Singh and in that melee the appellant and the deceased scuffle each other and thereafter under the grave and sudden provocation, the appellant inflicted knife injury to the deceased. In this background, it is difficult to hold that the appellant Pratap Sagar Rai committed the offence of murder and the office would thus only come under Section 302 Part II I.P.C.

We, therefore, set aside the conviction of the appellant Pratap Sagar Rai under Section 302 I.P.C. and instead convict him under Section 304 Part –II.

Accordingly, we alter the conviction of the appellant to Section 304 Part – II I.P.C. and in the circumstances of the case, we impose sentence of Rigorous Imprisonment for 7 years.

The appeal is disposed of with the about modification of the conviction in sentence.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

November 19, 2004
ASWAL